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HB 3452
RELATING TO LAND USE DEVELOPMENT

Statement for House Committee on
Planning, Energy and Environmental Protection
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HB 3452 would establish a revolving fund to enable the land use commission to obtain the information needed for its analysis of requests for boundary amendments and special permits.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

As pointed out in Section 1 of HB 3452, changes in land use designations can result in serious and costly impacts if those changes are approved without adequate information. Therefore, the proposal to provide funds to cover the costs of research and data collection required by the Land Use Commission pursuant to their decisionmaking responsibilities is commendable and we concur with this aspect of the intent of the bill. However, we have serious reservations about some of the proposed sources of money to this fund and the involvement of the Environmental Center in conducting the required studies.

The intent of this bill is somewhat confusing. On the one hand it appears to address a major problem related to the decisions of the Land Use Commission and on the other it appears to be a punitive measure singling out land speculators for special assessment. In regard to the first issue, it is our understanding that the Land Use Commission lacks funds and personnel for independent evaluations of proposed boundary amendments or special use permits. Consequently, far reaching land use decisions are made on the basis of information largely supplied by the proposers of such changes and therefore an objective and unbiased evaluation is unlikely. We concur that this is indeed a serious problem?

Under subsection (b), HB 3452 would require the Commission to determine the costs associated with evaluating the impacts of proposed land use changes and to assess the petitioner for these costs. These monies would be placed in the impact development fund. Charging the petitioner for costs attributable to the full and careful evaluation of the impacts of land use boundary amendments or for special permits seems like a reasonable and responsible approach to assure that sufficient information is available to the Land Use Commission to meet their decisionmaking responsibilities.

In addition to the monies, assessed directly for impact evaluation, HB 3452 subsection (c) provides that the commission may assess the petitioners if their reclassified lands are sold within 5 years of the date of reclassification from conservation, agricultural, or rural to urban. This assessment would be 10 percent of the sale price if the property is sold within 2 years and 5 percent of the sale price if the property is sold between 2 and 5 years after reclassification. The amount due from this second assessment would be reduced by the amount paid in the initial assessment.

The further assessment under subsection (c), however, seems like a punitive tax with potentially significant economic consequences to legitimate business. Furthermore, this second assessment would apply even if the property were sold at a loss. While such a scenario seems unlikely in today's economy, nevertheless it can happen particularly in the case of purchases of property at inflated prices. There is no limit on the size of property that would be subject to this 10 and 5 percent assessment fee so even the small land owner that obtains reclassification of his property would appear to be subject to this second assessment should he decide to sell the property within the 5 year period. Finally, this tax singles out land speculators for special assessment on fast-turn over sales. By the same rationale it could be argued that other speculation sales in the real estate market, such as condos or houses, do not receive such anti-speculation treatment.

Subsection (d) would require the commission to obtain the services of the Environmental Center to conduct the needed research or data collection and to coordinate their duties with us so as to assure objective analysis and standards. While we appreciate the apparent confidence and respect shown by the drafters of this legislation for the technical and objective competence of the Environmental Center, we respectfully must decline our services at this particular level.

The Environmental Center does not have the staff or support to carry out this task. Furthermore, one of our primary functions has been to serve as the coordinator of University expertise in the review of environmentally related issues and land use plans. As such we would be placed in a position of conflict of interest as both a preparer and reviewer. We would also be competing unfairly, i.e. with state support, against private firms that could well have the expertise to carry out some of the tasks. We urge that the Commission be directed to obtain the services of those most qualified to conduct the needed research or data collection. This would not preclude participation by the Environmental Center if some aspect of the evaluation could most effectively be handled by our organization or through our coordination function within the University system.

Section 4 indicates that the development impact research fund would be expended by the Department of Planning and Economic Development (DPED). With the restructuring and name change of DPED a few years ago, a change in expending agency is required. If the primary goal of the fund is to improve decisionmaking in land use reclassification through better evaluation of the impacts associated with land use changes then the Office of State Planning in cooperation with the Office of Environmental Quality Control and the Department of Land and Natural Resources might be the appropriate administering office.